ALTERNATIVE LANGUAGE
REVISION OF PROPERTY TAX RULE 462.040, CHANGE IN OWNERSHIP – JOINT TENANCIES

NO.	SECTION REFERENCE		SOURCE	PROPOSED LANGUAGE
1	(b)(1)	Ex 4	Winston & Strawn LLP – Bradley Marsh	The language proposed by the California Assessor's Association ("CAA") would completely reverse the outcome of a common transaction, and is contrary to the relevant statute. Revenue and Taxation Code section 65(b) states, in part, as follows: There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants. Upon the creation of a joint tenancy interest described in this subdivision, the transferor or transferors shall be the "original transferor or transferors" for purposes of determining the property to be reappraised on subsequent transfers. Example 4 of subsection (b)(1) involves two people creating a joint tenancy who remain joint tenants after its creation. There is no statutory requirement, express or implied, that a third person be involved. If the Legislature had intended such an odd result, it would have been more explicit. The proposed change would lead to the opposite result of the statutory language and should be rejected. In addition, the proposed language, requiring a third person to be involved is illogical. Why does the proposed amendment attempt to prohibit two people from creating a joint tenancy in which they would be considered original transferors? Requiring two people to create a joint tenancy and then create a second joint tenancy that adds a third person in order to achieve the benefit of original transferor status makes little sense, and the CAA has offered no justification, either in law or policy, supporting the change.
2	(b)(1)	Ex 4	Ambrecht & Associates – Dibby Allan Green	It is also difficult to reconcile the proposed rule change with the clear statutory language. Rev. & Tax. Code §62(f) excludes from a change in ownership "The creation or transfer of a joint tenancy interest if the transferor, after the creation or transfer, is one of the joint tenants as provided in subdivision (b) of Section 65." §65(b) states "There shall be no change in ownership upon the creation or transfer of a joint tenancy interest if the transferor or transferors, after such creation or transfer, are among the joint tenants." Both statutes clearly give room for there being grantee joint tenants in addition to the transferor(s), but neither statute requires it. The requirement for an additional person can be easily circumvented. This leads to the question of what is the material result of the rule change? What public good seeking to be served?
3	(b)(1)	Ex 7-1	Yolo County Assessor's Office – P. Pedroia	When A dies, I think it needs to clarify that it is a 100% change in ownership at that time.
4	(b)(1)	Ex 7-1	Ambrecht & Associates – Dibby Allan Green	Not specifying whether B and C are also original transferors or not does lead to the speculation of whether there is a reassessment upon A's death, and makes the example a bit of a confusing read. As a second point, if the rule is not modified, then another reason D does not become an original transferor is because D did not receive his interest from A, his original transferor spouse.

No.	Section Reference		Source	Proposed Language
5	(b)(1)	Ex 7-2	Winston & Strawn LLP – Bradley Marsh	The CAA's proposal to remove this example from the regulation is unnecessary and could create confusion. Revenue and Taxation Code section 65(b) states, in part, as follows: The spouses of original transferors shall also be considered original transferors within the meaning of this section. Existing example 7-2 of subsection (b)(1) explains a reasonably common occurrence when such rule would be applied. In real world terms, the example could involve a situation where a daughter and her mother own a property as joint tenants. The daughter now wishes the property to be owned by her mother and her husband. Daughter and her mother transfer the property to mother and husband. The statute clearly provides that the spouses of original transferors shall also be considered original transferors. Thus, the example does not broaden what is allowed by the Code, as alleged by the CAA. Moreover, removing this example is unnecessary and could create confusion when taxpayers are looking to understand how the provision might work.
6	(b)(1)	Ex 7-2	Ambrecht & Associates – Dibby Allan Green	In a joint tenancy, any time one joint tenant dies and the surviving spouse is not also a surviving joint tenant, then the decedent joint tenant's interest cannot go to a spouse. Therefore, the situation anticipated by this change to the rule can only be a lifetime transfer, not in an estate. The effect of the rule change, therefore, would be to have the addition of an original transferor's spouse on title to become an original transferor, but would provide that a replacement of an original transferor with his/her spouse would have that spouse only be an other than original transferor. This would be inconsistent with the policy that transfer to a spouse does not sever a joint tenancy, and inconsistent with last sentence of §65(b) providing, "The spouses of original transferors shall also be considered original transferors within the meaning of this section." Why the difference?
7	(b)(1)	Ex 8	Ambrecht & Associates – Dibby Allan Green	If A and B were original transferors, then under §65(c) wouldn't there be no reassessment in a transfer to B, C and D as joint tenants? So to get a 66-2/3 reassessment I think it needs to be clear that B (at least) is an other than original joint tenant.
8	(b)(1)	Ex 9	Yolo County Assessor's Office – P. Pedroia	When C & D transfer their interest to each other via trust interest doesn't that affect the j/t between A, B, C & D and create a 50% reappraisal? What would happen if either C or D dies wouldn't their interest just go to C or D as successor beneficiaries of the trusts?
9	(b)(2)	Ex 10	Ambrecht & Associates – Dibby Allan Green	It would be helpful to clarify at the beginning: "A and B as joint tenants as original transferors transfer to A, B, C and D as joint tenants. C and D are other than original transferors." The reason for this clarification is that if A and B are tenants in common (and silence presumes TIC ownership), then all of A, B, C and D would be original transferors; but the example implies that B is the only remaining original transferor.
10	(b)(3)	Ex 13	Winston & Strawn LLP – Bradley Marsh	Changing this example is unnecessary and creates the same problems as the proposed changes to subsection (b)(1), Example 4. As discussed above, there should be no dispute that the statute contemplates individuals transferring property to themselves as joint tenants are entitled to "original transferor" status. The proposed change confuses the issue and makes the existing example less meaningful.

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11	(b)(3)	Ex 13	Santa Clara County Assessor's Office – N. Galvez	Suggested rephrase for clarification purposes: Following the example set forth in Example 12 above, D dies and D's joint tenancy interest passes to B by operation of law. Since B is an "original transferor," there is no ~~without a~~ change in ownership. ~~because B is an "original transferor."~~ Upon D's death, the joint tenancy is terminated and B cases to be an "original transferor."
12	(b)(4)	Ex 14-2	Winston & Strawn LLP – Bradley Marsh	The proposed regulatory addition is contrary to existing law. Section 65(a) states that "[t]he creation, transfer, or termination of any joint tenancy is a change in ownership except as provided in this section, Section 62, and Section 63." Section 62(a)(1) provides that a change in ownership does not include "[a]ny transfer between coowners that results in a change in the method of holding title to the real property transferred without changing the proportional interests of the coowners in that real property, such as a partition of a tenancy in common." Section 62(a)(2) provides that a change in ownership does not include "[a]ny transfer between... individuals and a legal entity... that results solely in a change in the method of holding title to the real property...." Therefore, section 65 specifically incorporates the proportional transfer exclusion. The regulations also support this result (See Cal. Code Regs., tit. 18, §§ 462.040(b)(4)(C) [a transfer terminating a joint tenancy and transferring the real property to an entity where the interests of the transferors and the transferees remain the same after the transfer is not a change in ownership], 462.180(b)(2), Example 4 [providing that the transaction, performed in reverse order, also is not a change in ownership.] In addition, as indicated in the CAA's request, the CAA's position on this issue has been rejected by at least one assessment appeals board and the superior court that reviewed that decision. That case is pending before the Court of Appeal, so it would be premature and improper for the Board to initiate a rule change now that may contradict the Court's interpretation of how sections 62, 63, and 65 interact with regard to this issue. Historically, the Board has refused to take such action during the pendency of an appeal.
13			Berliner Cohen – Bruce Shetler	Is there any opportunity here to make it explicit that the transfer to the trust benefitting the other (now former) joint tenant effects a severance of the joint tenancy? That concept might make it clear that even under the old rule it is a legal impossibility to have a joint tenancy with a trust.